



THE UPDATE

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DANGEROUS DRIVING - HUNDAL - TEST TO APPLY

R. v. Poon - Dec. 6, 2006 ABQB
857 per Park, J:

Appeal from conviction on dangerous driving charge. Facts included: accused travelling approximately 100 km/hr in a merge lane for a few seconds (speed limit was 50 or 60 km/hr), accused then slammed on his brakes, started to fishtail and struck a curb. Incident ended with a "horrific accident".

Held: Appeal allowed, acquittal entered.

No evidence of erratic or improper driving prior to accused's brief acceleration to 100 km/hr. "The factor of the 'horrific' accident does not play a role in determining whether Poon's driving is clearly a 'marked departure' from the standard of care a reasonable person would observe". The accident constituted the aftermath of the accused's conduct. "One should not extrapolate the subsequent accident into the question whether Poon's driving met the test in *Hundal*".

J. Chadi - Defence Counsel

HEARSAY - STATEMENTS OF DECEASED - ADMISSIBILITY

R. v. White - Dec. 7, 2006 ABQB
884 per Moreau, J:

Murder trial. Accused charged with killing his wife. Crown sought to introduce statements made by the deceased to a friend/co-worker. First category of statements concerned deceased's plan to attend a social event on the day of her disappearance with her friend. Second category concerned deceased's statements concerning her morning routines.

Held: First category admissible, second category inadmissible.

Deceased's statements regarding future intentions were both necessary and reliable, given both the proximity of the timing of the statement and the nature of it. Regarding the morning routine, threshold relevance and trustworthiness not established. The evidence lacked specificity regarding the repetitive nature of any type of routine.

L. Stevens, R. Shaigec -
Defence Counsel

IMPAIRED DRIVING - 10(B) - PROVISION OF PHONE BOOKS

R. v. Anderson - Dec. 6, 2006 ABPC
309 per Fraser, PCJ:

Impaired driving trial. Issue regarding whether accused afforded reasonable opportunity to exercise 10(b) rights. Accused provided with a phone, the toll free number and a Brydges list. No phone books in the room. Accused did not request phone books. Accused was belligerent. After speaking with the toll free lawyer, accused told police that he was satisfied with the advice.

Held: No 10(b) breach.

No onus on police to automatically provide white and yellow pages. Rigid rules re: 10(b) rights do not apply in every case regardless of the circumstances: *Watson* [2005] AJ No 1167. "There is an onus on the accused to state what he wants if he wants to choose a specific option. A police officer does not have to mind-read or ask questions unless there is some outward appearance that the accused doesn't understand or is confused".

T. Sturgeon - Defence Counsel

SENTENCE - IMPAIRED DRIVING CAUSING DEATH

R. v. Gross - Dec. 7, 2006 ABPC 353 per Fraser, PCJ:

Accused pled guilty to 2 charges of impaired driving causing death and 2 charges of impaired causing bodily harm. Highway collision where accused failed to stop at a stop sign. Passenger in accused's vehicle (his cousin) and a passenger in the other vehicle died. Relatively serious injuries caused to 2 others. Blood-alcohol concentration in the range of 220 - 240 mg% at time of collision. No record, accused was a member of a Hutterite Colony.

Held: 2 years less 1 day jail.

Denunciation and deterrence not able to be achieved through a conditional sentence: *Khosa* (2003), 180 CCC (3d) 225; *Biancofiore* (1997), 119 CCC (3d) 344. Usual range of sentence being 30-60 months. "However, I recognize an offender who lives in a reclusive lifestyle on a Colony with little contact with the outside world, will suffer much more in a penitentiary than most anyone else". Authorities reviewed.

A. Hepner - Defence Counsel

SENTENCE - SEXUAL ASSAULT & CHILD PORNOGRAPHY

R. v. R.B.J. - Dec. 1, 2006 ABPC 173 per Semenuk, PCJ:

Accused pled guilty to 13 charges including: possession and making of child pornography, sexual interference and sexual assault. 8 different victims, 2 of whom were the accused's children, and the others were the friends of his children. All of the children were under 14. The child pornography involved children as young as 4 engaged in sexual acts. Accused captured many of his own acts of sexual assault on video. 40 year old accused with no record.

Held: 7 years jail.

Jail sentence reduced to 4 years 7 months in view of pre-trial custody. Accused possessed over 3900 pornographic images and 372 movies. "Denunciation and deterrence ... are paramount considerations in sentencing those people who make child pornography": *Hewlett* (2002), 167 CCC (3d) 425. Although most of the sexual offences involved touching only, in 2 of the cases there was digital penetration. "The accused is a sexual predator".

T. Roulston - Defence Counsel

STATEMENTS - RELEVANCE - ACCUSED'S STATEMENTS

R. v. White - Dec. 7, 2006 ABQB 885 per Moreau, J:

Murder trial. Accused charged with killing his wife. Crown sought to introduce statement made by accused to a case worker at the Remand Centre. Case worker was asking accused about his placement with certain inmates, to which the accused responded that "he knows what they had done and they knew what he had done and they were comfortable with each other".

Held: Statement inadmissible.

Relevance must be established by the Crown on a balance of probabilities.

Relevance must also outweigh prejudice: *Dimitrov* (2003), 181 CCC (3d) 554. "The jury is required, in dealing with this evidence, first to infer that he was referring to the crime before the court and secondly, that it is an inculpatory statement and not, for example, 'they know what I did was nothing'. A third inference is then required, namely that they knew because White told them so. This wanders into the realm of speculation ... the tenuous probative value of the statement is outweighed by its prejudicial effect".

L. Stevens, R. Shaigec - Defence Counsel

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